

AUG 4 1978

MICHAEL A. GILLY, JR., CLERK

No. 77-1773
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

PRUNE BARGAINING ASSOCIATION, ET AL.,
PETITIONERS

V.

BOB BERGLAND, SECRETARY OF AGRICULTURE, ET AL.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

MEMORANDUM OF RESPONDENT DEL MONTE
CORPORATION IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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Of Counsel

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Respondent DEL MONTE CORPORATION

(hereinafter "Del Monte") hereby joins in and adopts the memorandum in opposition filed by the Solicitor General of the United States. Del Monte adds the following comments:

While the marketing order requires generally that the composition of the reserve set aside by each handler be the same in both size and quality of prunes as the composition

1.

of all prune deliveries to the handler, the order and the regulations issued thereunder contemplate that the reserve composition may be altered as a result of sales of reserve prunes (e.g., 7 C.F.R. § 993.65(b)) or exchanges by handlers of salable for reserve prunes (7 C.F.R. § 993.157(f)). In either case, the value of the reserve as initially set aside is protected: to the extent that a handler exercises the right to exchange salable prunes for reserve prunes, it must compensate the committee for the value of the exchange (7 C.F.R. § 993.157(f)).*

* 7 C.F.R. § 993.157(f) provides:

"No handler shall exchange salable prunes for reserve prunes unless he has entered into a sales agreement authorized pursuant to section 993.65(b) whereby the value of any such exchange, and payment therefor to the Committee, shall be determined."

2.

Petitioners' contention that the handlers "invade the reserves on a daily basis exchanging the less valuable prunes in their possession for the more valuable prunes in the reserve" (Petition, p. 6) simply ignores the provisions of the sales agreements between the committee and the handlers (which permit the exchange), and of the regulation, with respect to payments to the committee for prunes taken from the reserve.

Petitioners' erroneous contentions that the courts below did not address the question whether there were discrepancies between the regulations and the sales agreements (Petition, pp. 6, 8) should be compared with the district court's opinion (Appx. B to Petition, pp. B-15 to B-18):

"The Secretary, then, in attempting to achieve the objective of the Act-- the maintenance and establishment of

orderly marketing procedures and of parity prices--has indicated through his Order and the regulations promulgated thereunder that if the producers through the Committee enter into a contract with handlers permitting the handlers to exchange reserve for salable prunes, and if such contract provides for specified compensation for the value lost to producers on account of such exchanges, then the congressional goals will have been met" (Appx. B to Petition, p. B-17).

The lower courts' interpretation of the order, the regulations and the sales agreements is not only in accord with that of the Secretary of Agriculture but also with the congressional policy underlying the act. The decisions of the district court and the court of appeals are therefore correct

and petitioners' action was properly dismissed.

Petitioners apparently believe they know of a better way to provide for the control and disposition of surpluses through reserve pools. Their petition, however, asserts no conflict with any decision of this or any other court and presents no special or important reasons for review on writ of certiorari.

It is, therefore, respectfully submitted that the writ of certiorari should be denied.

Robert M. Westberg
ROBERT M. WESTBERG
Attorney for Respondent
Del Monte Corporation

PILLSBURY, MADISON & SUTRO

Of Counsel

5.

I hereby certify that on this 3rd day of August, 1978, three copies of the Memorandum of Del Monte in Opposition to the Petition for Writ of Certiorari were mailed, postage prepaid to H. T. MORROW, ESQUIRE, 4 North Second Street, San Jose, California 95113 and ROBERT MEZZETTI, ESQUIRE, 28 North First Street, San Jose, California 95113, Attorneys for Defendant MAYFAIR PACKING COMPANY, VALLEY VIEW PACKING COMPANY, STAPLETON - SPENCE, PAUL A. MARIANI COMPANY and HARTER PACKING COMPANY; three copies to BRUCE I. CORNBUM, ESQUIRE, 1568 Sixth Avenue, San Diego, California 92101, Counsel for Petitioner; three copies to A. JAMES ROBERTS, III, ESQUIRE, 609 South Grand Avenue, Los Angeles, California 90017, Attorney for SUN SWEET GROWERS, INC; three copies to DENNIS BECKER, ESQUIRE, Office of the General Counsel, Department of Agriculture, Washington, D.C. 20250; three copies to MORRIS GRUPP, ESQUIRE, 1355 Delfino, Menlo Park, California 94025, Counsel for Petitioner; three copies to Solicitor General, Department of Justice, Washington, D.C. 20530. I further certify that all parties required to be served have been served.

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